

Calendar No. 882

91ST CONGRESS }
2d Session }

SENATE

{ REPORT
No. 91-883

CAPT. JOHN T. LAWLOR (RETIRED)

MAY 19, 1970.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 8694]

The Committee on the Judiciary, to which was referred the bill (H.R. 8694) for the relief of Capt. John T. Lawlor (retired), having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve Capt. John T. Lawlor, a retired Army officer of liability in the amount of \$4,705.84, representing overpayments of retired pay in the period from May 26, 1958, to August 31, 1967, which resulted from an administrative error in the determination of service credit in the computation of that pay.

STATEMENT

The Department of the Army in its report to the House Judiciary Committee on a similar bill in the 90th Congress stated that it was not opposed to the bill.

The overpayment which is referred to in H.R. 8694 resulted in an error in the computation of retired pay which remained undiscovered for more than 9 years. John T. Lawlor retired from the Army on August 31, 1955, in the grade of chief warrant officer (W-3). Prior to his enlistment in the Army he had served in the Navy and in the National Guard. At the time of his retirement he had a total of 31 years, 2 months, and 18 days' service of which 27 years, 3 months, and 5 days were active service. Upon retirement, under section 14 of

the Warrant Officer Act of 1954, 68 Stat. 163 (restated as 10 U.S.C. 1293), he was entitled to retired pay equal to 75 percent of the basic pay of a chief warrant officer (W-3), based on his more than 30 years total service. The committee feels that this is a significant fact because, as is noted above and outlined in the Army report, at that time he was paid on the basis of his more than 30 years total service. The pay situation was changed because on May 26, 1958, he was advanced, under section 3964 of title 10, United States Code, to the highest temporary grade in which he had served satisfactorily on active duty; i.e., the grade of captain. Upon his advancement on the retired list, he was entitled to have his retired pay recomputed as provided in section 3992 of title, United States Code. Under this section, the multiplier is determined by multiplying his years of active service, rounded off to the nearest year, by $2\frac{1}{2}$ percent. As thus computed, his new multiplier was $67\frac{1}{2}$ percent. The percentage factor used, however, in computing Captain Lawlor's retired pay in his advanced grade was not $67\frac{1}{2}$ percent but the old rate of 75 percent. This error was not discovered until 1967 and the error resulted in an overpayment to Captain Lawlor in the amount of \$4,705.84 for the period May 26, 1958, through August 31, 1967. As of January 31, 1968, Captain Lawlor has repaid, by withholding \$45 per month from his retired pay, the amount of \$90. As of that date, the balance was \$4,615.84.

The Army report stated that Captain Lawlor's wife, then 57 years of age, was dependent upon him for financial support and is afflicted with a pulmonary ailment. His daughter, then aged 20, was a second-year student at Louisiana State University and was also dependent upon him for support. His income from his Army retirement and his civilian job is approximately \$665 a month. His home is subject to a \$9,000 mortgage and, at the time of the Army report, he owed \$1,000 on the 1966 Corvair automobile. Captain Lawlor is over 60 years of age and suffers from arthritis. As of the time of the Army report, it was contemplated that his then employment contract would end on August 31, 1968, and he anticipated difficulty in securing additional employment. The Army further determined that he had no knowledge that he was receiving excess pay and received his retirement pay in good faith. The Army further determined that repayment in this instance would impose a hardship on Captain Lawlor and his family. For these reasons, the Army did not oppose the bill. The committee agrees that this is a proper subject for legislative relief and recommends that the bill be considered favorably.

Attached hereto and made a part hereof is the report submitted by the Department of the Army on a similar bill in the 90th Congress and the report of the Comptroller General submitted to the House Judiciary Committee on the instant bill.

DEPARTMENT OF THE ARMY,
Washington, D.C., August 23, 1968.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army on H.R. 14752, 90th Congress, a bill for the relief of Captain John T. Lawlor (retired).

This bill would relieve Capt. John T. Lawlor, U.S. Army (retired) from liability to the United States in the amount of \$4,705.84, representing overpayments of retired pay received by him for the period beginning May 26, 1958, and ending August 31, 1967.

The Department of the Army is not opposed to the bill.

Department of the Army records disclose that John T. Lawlor enlisted in the Army on November 14, 1927. On August 31, 1955, he retired from the Army, in the grade of chief warrant officer (W-3). Prior to his enlistment in the Army he had served in the Navy and in the National Guard. At the time of his retirement he had a total of 31 years, 2 months, and 18 days service of which 27 years, 3 months, and 5 days were active service. Upon retirement, under section 14 of the Warrant Officer Act of 1954, 68 Stat. 163 (restated as 10 U.S.C. 1293), he was entitled to retired pay equal to 75 percent of the basic pay of a chief warrant officer (W-3) based on his more than 30 years total service. On May 26, 1958, he was advanced, under section 3964 of title 10, United States Code, to the highest temporary grade in which he had served satisfactorily on active duty; that is, the grade of captain. Upon his advancement on the retired list, he was entitled to have his retired pay recomputed as provided in section 3992 of title 10, United States Code. Under this section, the multiplier is determined by multiplying his years of active service, rounded off to the nearest year, by 2½ percent. As thus computed, his new multiplier was 67½ percent. The percentage factor used, however, in computing Captain Lawlor's retired pay in his advanced grade was not 67½ percent but the old rate of 75 percent. This error was not discovered until 1967 and the error resulted in an overpayment to Captain Lawlor in the amount of \$4,705.84 for the period May 26, 1958, through August 31, 1967. As of January 31, 1968, Captain Lawlor has repaid, by withholding \$45 per month from his retired pay, the amount of \$90. As of that date, the balance due was \$4,615.84.

The following persons are dependent on Captain Lawlor for financial support: wife, Anna B. Lawlor, age 57, afflicted with a pulmonary ailment; and daughter, Mary Lawlor, age 20, a second-year student at Louisiana State University.

Captain Lawlor advises that his monthly income from his Army retirement pay, and his civilian job as military property custodian is \$665. He further advises that his assets consists of a home with a \$9,000 mortgage, a 1966 Corvair automobile on which he owes \$1,000. Captain Lawlor states that he has no savings account, stocks, or bonds.

Captain Lawlor is over 60 years of age and, although now employed, his employment contract ends on August 31, 1968. He envisions difficulty in securing new employment due to his age and physical condition. He has arthritis.

It is clear that the overpayment resulted from the administrative error of Department of the Army personnel. Captain Lawlor had no knowledge that he was receiving excess retired pay until he was advised of the overpayment in 1967. He received it in good faith, and as repayment imposes a severe hardship on him and his family, the Department of the Army is not opposed to the bill.

The cost of the bill, if enacted, will be \$4,705.84.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

DAVID E. MCGIFFERT,
Acting Secretary of the Army.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 28, 1969.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives

DEAR MR. CHAIRMAN: Reference is made to your letter of March 19, 1969, requesting our views on H.R. 8694, a bill for the relief of Capt. John T. Lawlor (retired).

The bill would relieve Captain Lawlor, U.S. Army, retired, of his liability to the United States in the amount of \$4,705.84, representing overpayments of retired pay received by him for the period beginning May 26, 1958, and ending August 31, 1967, as a result of an administrative error. Also, the bill would relieve the certifying or disbursing officer of liability to the extent of the overpayment and would authorize and direct the Secretary of the Treasury to pay to Captain Lawlor an amount equal to the sum of any amounts paid or withheld from him on account of such overpayment.

On July 9, 1968, B-164476, we furnished your committee with a report on an identical bill, H.R. 14752, 90th Congress, for the relief of Captain Lawlor.

As pointed out in that report, an examination of Mr. Lawlor's retired pay account and related documents shows that effective August 31, 1955, he retired from the Army as a regular warrant officer, CWO W-3, under authority of section 14 of the act of May 29, 1954 (ch. 249, 68 Stat. 157, 10 U.S.C. 1293). At that time he had 27 years, 3 months, and 5 days of actual active service for retirement and 31 years, 2 months, and 18 days total service for basic pay purposes (including inactive service). He was entitled to retired pay computed at 75 percent ($2\frac{1}{2}$ percent times 30 years) of the basic pay of a warrant officer (W-3) with over 30 years' service.

On May 26, 1958, when Mr. Lawlor accumulated 30 years of service (including his service on the retired list), he was advanced to the grade of captain (the highest temporary grade in which he served on active duty satisfactorily, as determined by the Secretary of the Army) pursuant to 10 U.S.C. 3964. A member of the Army who is advanced on the retired list under 10 U.S.C. 3964 is entitled to have his retired pay recomputed as provided in section 3992 by multiplying the monthly basic pay of the grade to which advanced by $2\frac{1}{2}$ percent times "years of service credited to him under section 3925," not to exceed 75 percent. In computing the years of service under 10 U.S.C. 3925, only "active service" is authorized to be used.

For the period May 26, 1958, to August 31, 1967, however, Captain Lawlor's retired pay was computed at 75 percent of the basic pay of a captain, (0-3), with over 30 years' service rather than at the rate of

67½ percent of that grade as required by 10 U.S.C. 3992. The pay information indicates that the overpayment for the period in question amounted to \$4,705.84, the amount stated in the bill.

The records further show collections of \$45 a month from Captain Lawlor's retired pay from December 1967 through February 1968, and \$30 a month for March 1968. Collection action was terminated effective April 1, 1968, making a total collection of \$65. We have been advised informally that no further collection action has been taken in this case.

We do not view with favor legislation such as H.R. 8694 which grants preferential treatment to an individual over other individuals similarly situated. Other persons have been required to refund overpayments received because of erroneous retired pay computations. On the record before us we find no special equity in Captain Lawlor's case which would warrant our recommending favorable consideration of the bill.

Sincerely yours,

ROBERT F. KELLER,
Acting Comptroller General of the United States.

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77.1 percent of the 1968 collection of 11,547,000. The 1968 collection indicates that the overpayment for the period in question amounted to \$4,000.00, the amount stated in the bill.

The records further show collections of \$45 a month from January 1968 to June 1968, and from January 1968 to January 1969. Collections and overpayments for the period January 1968 to June 1968, totaling a total collection of \$2,175.00, were not included in the bill. It is noted that the collection action was taken in the year 1968.

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